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3 **UNITED STATES DISTRICT COURT**
4 **WESTERN DISTRICT OF WASHINGTON**

5 SANDRA HERRERA, et al.,

6 Plaintiffs,

7 vs.

8 PIERCE COUNTY, et al.,

9 Defendants.

Case No. C95-5025 RJB/JKA

**ORDER REJECTING
STIPULATION TO SEAL
MORTALITY REVIEWS**

10 This matter comes before the court pursuant to the parties proposed Stipulation to File
11 Mortality Reviews Under Seal (Dkt #220). The Mortality Reviews in question were prepared by
12 the Pierce County Jail physician regarding the death of inmates from 2006 through 2008. The
13 court has considered the Stipulation, the subject Mortality Reviews, and the proposed Order. The
14 court conducted a telephone conference with counsel advising them of the court's reluctance to
15 approve the order (even though stipulated) for a variety of reasons relating the issue of
16 transparency regarding public records, and the fact that the persons for whom the privilege was
17 asserted are deceased. The court heard further from counsel, agreed to review the Mortality
18 Reviews for content, and having considered the files and records herein, finds and orders as
19 follows:

20 1. Federal Courts have not traditionally honored state statutes providing for a privilege
21 when considering county correctional health services *mortality reviews* (emphasis supplied)
22 regarding the circumstances of a prisoner's death. Agster v. Maricopa County (9th Cir. 2005)
23 422 F.3d 836, 838-839. Virmani v. Novant Health Inc. (4th Cir. 2001) 259 F3d 284, 293; Adkins
24 v. Christie (11th Cir. 2007) 488 F3d 1324, 137-1330.

25 2. The parties request to seal the Mortality Reviews is denied.

26 3. Nothing in this ruling should be construed to preclude the defendants' rights to
27 challenge the relevancy or admissibility of the Mortality Reviews.

28 Dated this 19th day of August 2009.

/s/ J. Kelley Arnold
J. Kelley Arnold, U.S. Magistrate Judge